

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

**IN RE: AMENDMENT TO RULE 9, SECTION 9.4
RULES OF THE TENNESSEE SUPREME COURT**

No. M2007-01197-SC-RL2-RL - Filed: June 4, 2007

ORDER

The Court proposes an amendment to section 9.4 of Rule 9, pertaining to the investigation of complaints against attorney members of the Board alleging violations of the Attorney's Oath of Office or the Rules of Professional Conduct. The proposed amendment is attached hereto as Appendix A.

In the interest of providing prompt and fair consideration of the proposed amended Rule 9, section 9.4, the Court hereby solicits written comments on the proposed amendment from the bench, the bar, and the public. The deadline for submitting written comments is July 2, 2007. Written comments should be addressed to:

Michael W. Catalano, Clerk
Re: Rule 9, Section 9.4 Comments
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407

The Clerk shall provide a copy of this order to the media, to the Board of Professional Responsibility, and to the Tennessee Bar Association. In addition, this order and the proposed amended Rule 9, section 9.4 shall be posted on the Tennessee Supreme Court's website.

FOR THE COURT:

WILLIAM M. BARKER, CHIEF JUSTICE

APPENDIX A

PROPOSED AMENDMENT TO RULE 9, SECTION 9.4, TENN. SUP. CT. R.

9.4. The investigations of complaints submitted under Section 9.2 of Rule 9 against attorney members of the Board shall proceed in accordance with the procedures contained in Section 8 of Rule 9, with the following modifications:

(a) A special Disciplinary Counsel, whom the Chief Justice shall appoint, shall take the place and perform all of the functions of Disciplinary Counsel set forth in Section 8.1 of Rule 9, including all investigations, whether upon complaint or otherwise. Upon conclusion of an investigation, special Disciplinary Counsel may recommend dismissal, informal admonition of the attorney concerned, or a private reprimand, public censure, or prosecution of formal charges before a special hearing panel.

(b) One member of the Court, whom the Chief Justice shall designate, shall take the place and perform all of the functions of the Board in all investigations and proceedings governed by Rule 9, including the review of recommendations of dismissal or informal admonition of the attorney concerned, or a private reprimand, public censure or prosecution of formal charges, pursuant to section 8.1. The member so designated shall not participate with the Court in any subsequent proceedings in the same case.

(1) If special Disciplinary Counsel's recommendation is dismissal or informal admonition, it shall be reviewed by the designated member of the Court ("reviewing justice"), who may approve or modify it. If the recommendation is approved by the reviewing justice, notice of the disposition shall be provided by special Disciplinary Counsel to the complainant. A complainant who is not satisfied with the disposition of the matter may appeal in writing to the Chief Justice within thirty (30) days of receipt of notice of the reviewing justice's approval of the recommended disposition. The Court may approve, modify, or disapprove the disposition, or direct that the matter be investigated further.

(2) If the recommended disposition is private reprimand, public censure, or prosecution of formal charges before a special hearing panel, the reviewing justice shall review the recommendation and shall approve, disapprove, or modify it. The reviewing justice may determine whether a matter should be concluded by dismissal or informal admonition; may approve or impose a private reprimand or public censure; or may direct that a formal proceeding be instituted before a special hearing panel.

(3) The respondent shall not be entitled to appeal an informal admonition approved by the reviewing justice; similarly, a respondent may not appeal a private reprimand or public censure approved or imposed by the reviewing justice. In either case, however, the respondent may, within twenty (20) days of notice thereof, demand as of right that a formal proceeding be instituted before a special hearing panel. In the event of such demand, the informal admonition shall be vacated or the

recommended private reprimand or public censure shall be withdrawn, and the matter shall be disposed of in the same manner as any other formal hearing instituted before a hearing panel.

(c) If the recommendation, as approved or modified by the designated member of the Court, includes the institution of formal proceedings before a hearing panel, or if the attorney demands in writing to the Chief Justice such formal proceedings as of right, then the Chief Justice shall at that time appoint three persons to act as a special hearing panel. The special hearing panel shall take the place and perform all of the functions of the hearing panel as provided in Sections 6 and 8 of Rule 9. The special Disciplinary Counsel shall continue to perform the functions of Disciplinary Counsel and shall proceed in accordance with the provisions of Rule 9 governing formal proceedings.

(d) The respondent or special Disciplinary Counsel may obtain review of the judgment of the special hearing panel as provided in Sections 1.3, 1.4, 1.5, and 8.3 of Rule 9.